

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: LUMBER LIQUIDATORS
CHINESE-MANUFACTURED FLOORING
PRODUCTS MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION

MDL No. 1:15-md-02627 (AJT/TRJ)

This Document Relates to ALL Cases

**DECLARATION OF DOUGLAS J. MCNAMARA IN SUPPORT OF PLAINTIFFS'
MOTION TO AMEND SCHEDULING ORDER AND PERMIT DEPOSITION OF
THIRD-PARTY CALIFORNIA AIR RESOURCES BOARD**

I, Douglas J. McNamara, declare as follows:

1. I am Of Counsel with the law firm of Cohen Milstein Sellers & Toll, PLLC. I have personal knowledge of the matters stated herein and, if called upon, could competently testify thereto.
2. Attached as Exhibit 1 is a true and correct copy of a March 28, 2016 email I received from Ona Bacigalupi of Cotchett Pitre & McCarthy, LLP, that had a sharefile from Defense counsel with what purported to contain the "first set of documents from CARB." I reviewed those documents, and found them to be documents produced from Lumber Liquidators with "LLI" prefixes on bates numbering, along with "01 CARB" bates numbers. I recognized many of the documents as those previously produced to Plaintiffs. The documents were to be assigned reviewers, but not determined to require immediate review.
3. On May 11th, while preparing to depose Defendant's expert, Dallas Wait, I noticed documents listed in his reliance materials that I had not seen before. I emailed defense counsel and asked for the bates numbers, or for counsel to send me the documents. Defense counsel (Diane Flannery) promptly wrote back that the documents "are all materials produced by

CARB in our case.” I returned to our database, and could not locate the documents. I also located the sharefile Ms. Bacigalupi had sent, and found no matching documents. On March 12th, I received an email from Defense counsel (Will Stern) that included the bates numbers on the documents I had listed. Given the bates numbering was different—beginning “021 CARB” etc. – I concluded Plaintiffs had received the wrong file from Defense counsel in March. I requested Defense counsel to send me the production via a secure link. A true and accurate copy of my emails with Defense counsel on this topic are attached at Ex. 2.

4. On March 12th, I received an email from Kelsey Vickery with a secure link to “the April 14, 2016 CARB Production.” Plaintiffs were never made aware of any April 14th production. I reviewed the approximately 3,000 pages, flagging some additional documents to be used in the then upcoming expert depositions. I alerted my colleagues, one of whom, Ari Brown, was in communication with CARB. I have attached the May 12th email from Ms. Vickery as Ex. 3.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Executed this 10th day of June, 2016, in Washington, DC.

/s/ Douglas J. McNamara
Douglas J. McNamara

EXHIBIT 1

Douglas J. McNamara

From: Ona Bacigalupi <OBacigalupi@cpmlegal.com>
Sent: Monday, March 28, 2016 1:16 PM
To: Ari Brown; Douglas J. McNamara; Matt Edling
Cc: Nicolle Grueneich
Subject: FW: VM

CARB production is available at this link:

<https://cpmlegal.sharefile.com/d-s383273bb9c748489>

Ona

From: Ona Bacigalupi
Sent: Friday, March 25, 2016 9:46 AM
To: Matt Edling <MEdling@cpmlegal.com>; Wroblewski, Lauren Lynn <LWroblewski@mofo.com>; 'Ari Brown' <ari@hbsslaw.com>; Stern, William L. <WStern@mofo.com>
Cc: Gosling, Kimberly R. <KGosling@mofo.com>
Subject: RE: VM

Counsel:

You can upload the production to the following link:

<https://cpmlegal.sharefile.com/r-r50067b83110414fa>

Thank you.

Ona Szeto Bacigalupi

Senior Paralegal
COTCHETT, PITRE & MCCARTHY, LLP
840 Malcolm Road | Burlingame CA 94010
Tel: 650.697.6000 | Fax: 650.697.0577

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From: Matt Edling
Sent: Friday, March 25, 2016 9:30 AM
To: Wroblewski, Lauren Lynn <LWroblewski@mofo.com>; 'Ari Brown' <ari@hbsslaw.com>; Stern, William L. <WStern@mofo.com>
Cc: Gosling, Kimberly R. <KGosling@mofo.com>; Ona Bacigalupi <OBacigalupi@cpmlegal.com>
Subject: RE: VM

We can send you a file share and then you only need to upload it – save the hassle.

Thanks very much.

Matt Edling ([Bio](#))
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Tel: (650) 697-6000
Fax: (650) 697-0577
E-Mail: medling@cpmlegal.com

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From: Wroblewski, Lauren Lynn [<mailto:LWroblewski@mofo.com>]
Sent: Friday, March 25, 2016 9:28 AM
To: 'Ari Brown' <ari@hbsslaw.com>; Stern, William L. <WStern@mofo.com>; Matt Edling <MEdling@cpmlegal.com>
Cc: Gosling, Kimberly R. <KGosling@mofo.com>
Subject: RE: VM

Ari and Matt,

We have received a disk with the first set of documents from CARB. Where should we send it?

Thanks,

Lauren

From: Ari Brown [<mailto:ari@hbsslaw.com>]
Sent: Monday, March 14, 2016 10:20 AM
To: Wroblewski, Lauren Lynn; Stern, William L.; Matt Edling
Cc: Gosling, Kimberly R.
Subject: RE: VM

Ari

Ari Brown | **Hagens Berman Sobol Shapiro LLP** | Direct: (206) 268-9311

From: Wroblewski, Lauren Lynn [<mailto:LWroblewski@mofo.com>]
Sent: Monday, March 14, 2016 9:58 AM
To: Stern, William L.; Matt Edling

Cc: Gosling, Kimberly R.; Ari Brown
Subject: RE: VM

Matt,

Are you attending the deposition or is Ari? I need to provide names to building security.

Thanks,

Lauren

From: Stern, William L.
Sent: Sunday, March 13, 2016 12:51 PM
To: Matt Edling
Cc: Gosling, Kimberly R.; Ari Brown; Wroblewski, Lauren Lynn
Subject: Re: VM

Mofo Sacramento.

Sent from my iPhone

On Mar 13, 2016, at 11:15 AM, Matt Edling <MEdling@cpmlegal.com> wrote:

Carb sac or mofo sac?

On Mar 13, 2016, at 11:09 AM, "Stern, William L." <WStern@mofo.com> wrote:

Sacramento.

Sent from my iPhone

On Mar 13, 2016, at 11:07 AM, Gosling, Kimberly R. <KGosling@mofo.com> wrote:

Copying Will and Lauren, who can address your question.
Thanks.

On Mar 13, 2016, at 10:59 AM, Ari Brown <ari@hbsslaw.com> wrote:

Kim

Will the CARB deposition be taking place at CARB offices in Sacramento or at Morrison Foerster in San Francisco. Please let us know today. Want to make sure there is no confusion.

thanks

From: Matt Edling [MEdling@cpmlegal.com]
Sent: Tuesday, March 08, 2016 10:06 PM
To: Gosling, Kimberly R.
Cc: Ari Brown
Subject: RE: VM

Thanks for the quick response. See you in a week.

Matt Edling
(Bio<<http://www.cpmlegal.com/attorneys-Matthew-Edling.html>>)
Cotchett, Pitre & McCarthy,
LLP<<http://www.cpmlegal.com/>>
840 Malcolm Road, Suite 200
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E-Mail:
medling@cpmlegal.com<<mailto:medling@cpmlegal.com>>

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From: Gosling, Kimberly R.
[<mailto:KGosling@mofo.com>]
Sent: Tuesday, March 08, 2016 10:05 PM
To: Matt Edling <MEdling@cpmlegal.com>

Cc: Ari Brown <ari@hbsslaw.com>
Subject: RE: VM

Matt,

CARB hasn't produced the documents yet, but we will send them to you when we get them. Should be end of week.

Kim

Kimberly R. Gosling
Morrison & Foerster LLP
12531 High Bluff Drive, Suite 100 | San Diego, CA 92130
P. 858.314.5478 |
kgosling@mofo.com<<mailto:kgosling@mofo.com>>
From: Matt Edling
[<mailto:MEdling@cpmlegal.com>]
Sent: Tuesday, March 08, 2016 9:52 PM
To: Gosling, Kimberly R.
Cc: Ari Brown
Subject: VM

Kim –

Thanks for returning my call. We are going to cross-notice the CARB depo for the same day you noticed. I believe CARB produced documents to your office pursuant to subpoena. Please have someone from your office send them over to us. Thank you very much.

Matt Edling
(Bio<<http://www.cpmlegal.com/attorneys-Matthew-Edling.html>>)
Cotchett, Pitre & McCarthy,
LLP<<http://www.cpmlegal.com/>>
840 Malcolm Road, Suite 200
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Fax: (650) 697-0577
E-Mail:
medling@cpmlegal.com<<mailto:medling@cpmlegal.com>>

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EXHIBIT 2

Douglas J. McNamara

From: Douglas J. McNamara
Sent: Wednesday, May 11, 2016 2:35 PM
To: 'Flannery, Diane'
Cc: Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Diane, we could not locate these documents among our productions. Not sure what the problem is. Can someone send me those? Thanks.

From: Flannery, Diane [mailto:DFlannery@mcguirewoods.com]
Sent: Wednesday, May 11, 2016 10:51 AM
To: Douglas J. McNamara
Cc: Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Let me know if you can't locate them.

Diane Flannery
T: +1 804.775.1015 | M: +1 404.839.1153

-----Original Message-----

From: Douglas J. McNamara [mailto:DMcNamara@cohenmilstein.com]
Sent: Wednesday, May 11, 2016 10:41 AM
To: Flannery, Diane
Cc: Tribble, Christopher E.
Subject: Re: Lumber Liquidators MDL 2627 - request for extension

Thanks, Diane. I don't know if we put all the documents in our database that Lumber received in response to your subpoena to CARB. I'll doublecheck with our vendor.

Sent from my iPhone

On May 11, 2016, at 10:36 AM, Flannery, Diane
<DFlannery@mcguirewoods.com<mailto:DFlannery@mcguirewoods.com>> wrote:

Morning Doug,

I still have not heard back from Will Stern yet, but I believe these are all materials produced by CARB in our case.

Diane Flannery
T: +1 804.775.1015 | M: +1 404.839.1153

From: Douglas J. McNamara [mailto:DMcNamara@cohenmilstein.com]
Sent: Tuesday, May 10, 2016 3:08 PM

To: Flannery, Diane; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Looking over Dr. Wait's reliance materials, there are a few items I could not locate in the database, and that do not appear to be public materials. Can you provide the bates number, exhibit number, or send me these documents? Thank you for your cooperation.

* California Air Resources Board (CARB) , 2013d "Internal correspondence and documents re; CARB and USA EPA composite wood product regulations." 14p.

* Constantino, J. 2016 "Email to D. Kiyota (ARB) re: Lumber Liquidators press release." March 21

* Drury, R.; Kiyota 2015. "Emails between R. Drury (Lozeau Drury LLP) and D. Kiyota (CARB) re: Formaldehyde emissions and CARB deconstructive test."

* Grace, R.; Giorgi, S. [California Air Resources Board (CARB)]. 2014. "Emails between R. Grace and S. Giorgi re: Comp wood conditioning chamber down." January.

* Intertek (Kentwood, MI). 2015. "test report for: Soil/Water/Air Protection Enterprise: Emission testing: Variable humidity formaldehyde analysis." Report to Soil/Water/Air Protection Enterprise (Santa Monica, CA). 8p., August 4.

Thanks.

From: Flannery, Diane [<mailto:DFlannery@mcguirewoods.com>]
Sent: Tuesday, May 10, 2016 11:38 AM
To: Douglas J. McNamara; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Sounds good, thanks.

Diane Flannery
T: +1 804.775.1015 | M: +1 404.839.1153
From: Douglas J. McNamara [<mailto:DMcNamara@cohenmilstein.com>]
Sent: Tuesday, May 10, 2016 11:36 AM
To: Flannery, Diane; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Sure. Let's do 9:30: short report; should have him done by 2.

From: Flannery, Diane [<mailto:DFlannery@mcguirewoods.com>]
Sent: Tuesday, May 10, 2016 11:35 AM
To: Douglas J. McNamara; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

How about 9 am or 9:30 am for Wait? We are available to host in our office.

Diane Flannery
T: +1 804.775.1015 | M: +1 404.839.1153.
From: Douglas J. McNamara [<mailto:DMcNamara@cohenmilstein.com>]

Sent: Tuesday, May 10, 2016 11:31 AM
To: Flannery, Diane; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

Thanks. I will let the Court know.

I am the lucky duck coming your way next week to depose Dr. Wait. Do you all have a time preference on the 17th? I wanted to send the notice out today. Thanks.

From: Flannery, Diane [<mailto:DFlannery@mcguirewoods.com>]
Sent: Tuesday, May 10, 2016 11:29 AM
To: Douglas J. McNamara; Tribble, Christopher E.
Subject: RE: Lumber Liquidators MDL 2627 - request for extension

June 6 is agreeable.

Diane Flannery
T: +1 804.775.1015 | M: +1 404.839.1153
From: Douglas J. McNamara [<mailto:DMcNamara@cohenmilstein.com>]
Sent: Tuesday, May 10, 2016 11:29 AM
To: Flannery, Diane; Tribble, Christopher E.
Subject: FW: Lumber Liquidators MDL 2627 - request for extension

Hi, Diane and Chris. Any thoughts on this? Please advise.

From: Judge Jones@vaed.uscourts.gov<mailto:Judge_Jones@vaed.uscourts.gov>
[mailto:Judge_Jones@vaed.uscourts.gov]
Sent: Tuesday, May 10, 2016 9:21 AM
To: Douglas J. McNamara
Cc: DFlannery@mcguirewoods.com<<mailto:DFlannery@mcguirewoods.com>>; Steven J. Toll
Subject: Re: Lumber Liquidators MDL 2627 - request for extension

Dear Counsel -

My initial reaction to the request is that an extension for plaintiffs through Monday, June 6 is appropriate and should be adequate under the circumstances. If the parties cannot agree on that, Mr. McNamara should set up a conference call for tomorrow any time after 9:30 am and send me a call-in number.

TRJ

Thomas Rawles Jones, Jr.
U.S. Magistrate Judge
401 Courthouse Sq.
Alexandria, VA 22314
(703)299-2122 (voice)
(703)299-2223(fax)

-----"Douglas J. McNamara" <DMcNamara@cohenmilstein.com<<mailto:DMcNamara@cohenmilstein.com>>>
wrote: -----

To: "Judge Jones@vaed.uscourts.gov<mailto:Judge_Jones@vaed.uscourts.gov>"
<Judge_Jones@vaed.uscourts.gov<mailto:Judge_Jones@vaed.uscourts.gov>>

From: "Douglas J. McNamara"

<DMcNamara@cohenmilstein.com<mailto:DMcNamara@cohenmilstein.com>>

Date: 05/09/2016 10:23PM

Cc: "Flannery, Diane (DFlannery@mcguirewoods.com<mailto:DFlannery@mcguirewoods.com>)"

<DFlannery@mcguirewoods.com<mailto:DFlannery@mcguirewoods.com>>, "Steven J. Toll"

<SToll@cohenmilstein.com<mailto:SToll@cohenmilstein.com>>

Subject: Lumber Liquidators MDL 2627

Dear Judge Jones,

Plaintiffs would like to request a three-week extension of the May 25th deadline to disclose Plaintiffs' rebuttal reports. Plaintiffs did not expect Defendant to file eight expert reports in response to Plaintiffs' two reports. Plaintiffs have been working on scheduling those eight depositions, which now extend to May 24th. Also, the current deadline poses difficulty for our experts in finalizing their rebuttal reports within such a short time frame. Plaintiffs request a three-week extension for our experts to review the testimony of Defendant's experts and issue rebuttal reports on June 15th. Plaintiffs would make our experts available for deposition starting June 22nd, so they could all be deposed by June 30, but will work with Defendant if they required another week or so to depose Plaintiffs' experts on their rebuttal reports. Even with the proposed extension, Defendant would still have ample time to include the testimony of those witnesses in its summary judgment motion due on August 1. Plaintiffs requested that Defendant agree to this extension but they refused. Please let us know if you would like to hear further on this request. Thank you for your consideration.

<image001.gif>

Douglas J. McNamara?

Of Counsel

?

COHEN MILSTEIN SELLERS & TOLL PLLC

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EXHIBIT 3

Douglas J. McNamara

From: kvickery@mofo.com
Sent: Thursday, May 12, 2016 2:12 PM
To: Douglas J. McNamara
Cc: KLamb@mcguirewoods.com
Subject: LL MDL - CARB Production

You have received 1 secure file from kvickery@mofo.com.
Use the secure link below to download.

Attached please find the April 14, 2016 CARB Production.

Thanks

Kelsey Vickery
Paralegal
Morrison & Foerster LLP
425 Market St. | San Francisco, CA 94105
P: +1 (415) 268.6106
KVickery@mofo.com | www.mofo.com

Secure File Downloads:

Available until: **27 May 2016**

Click link to download:

[CARB Production.zip](#)
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